

**SUPERIOR COURT  
OF THE  
STATE OF DELAWARE**

**T. HENLEY GRAVES**  
*RESIDENT JUDGE*

**SUSSEX COUNTY COURTHOUSE**  
ONE THE CIRCLE, SUITE 2  
GEORGETOWN, DE 19947

August 18, 2006

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**RE: Swier v. Delaware Bay Surgical Services, P.A.**  
**C. A. No. 03C-03-030 THG**

Dear Counsel:

Pursuant to 19 *Del. C.* § 1113(c), Plaintiff asked this Court for attorney's fees incurred in the appeal of this Court's initial decision. Plaintiff also asked for a reinstatement of the attorney's fees granted Plaintiff in this Court's initial decision, but reversed by the Supreme Court. Plaintiff's request for attorney's fees is denied.

The Supreme Court determined that Defendant had a reasonable right of set-off which was greater than the wages Defendant owed Plaintiff. Therefore, the Supreme Court reversed this Court's ruling which found otherwise, and determined attorney's fees were not to be awarded under the wage claim statute. Plaintiff unsuccessfully sought reargument in the Supreme Court.

Now, the Plaintiff wants this Court to ignore the Supreme Court's rulings and reinstate the attorney's fees. There is no reason or merit in Plaintiff's request. The Supreme Court has determined Defendant had a right of set-off in an amount exceeding the wage claim; therefore, attorney's fees were not permitted. It would be contrary to the rule of law for this Court to grant Plaintiff's reinstatement request, and the Court is befuddled by such a request.

Nor is Plaintiff entitled to attorney's fees arising from the Supreme Court appeal. It did not successfully defend this Court's decision as to the wage claim.

The Plaintiff's Motion for attorney's fees is denied.

**IT IS SO ORDERED.**

Yours very truly,

T. Henley Graves

THG:baj  
cc: Prothonotary